IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION.

CRIMINAL REVISION APPLICATION NOS.170.171,285,286 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Shri S.V. Kotwal i.b Shri S.S. Bhandary for applicants.

Shri A.S. Gadkari, A.P.P. for the State.

CORAM : A.M. KHANWILKAR, J.

DATE : 09.09.2004

P.C.

. Heard Counsel for the parties. Rule.

2. Rule made returnable forthwith, by consent Shri Gadkari waives service of the notice for the respondents.

3. As short question is

raised petitions are taken up for final disposal forthwith, by consent. All these petitions can be disposed of by common judgment. The applicant in all the respective petitions had applied to the trial Court for discharge on the ground that he was falsely implicated and inspite of completion of investigation and filing of chargesheet, except the statement of co-accused there is absolutely no evidence against the applicant(s); nor applicant(s) was arrested along with main accused Zarina on 26th July, 2003, nor there is any incriminating evidence against the applicant(s) and no recovery of any contra band drug is made from or at the instance of the applicant(s). The Court below has rejected the applications on

the sole basis that contraband drugs certified to be dycetyl morphine was recovered from the possession of the accused Zarina, who was named in the information received by police and involvement of the applicant(s) was prima facie seen as co-conspirator and thus valid and sufficient ground existed to believe that the applicant(s) abetted or entered into criminal conspiracy with other co-accused for illegal possession and sale of heroin. The Court below has observed that the applicants were charged for the offences punishable under Section 21 R/w section 29 of N.D.P.S. Act for which reason they were not entitled for discharge.

4. Having considered the rival submissions and after

perusal of record there is substance in the grievance made on behalf of the applicant(s) before this Court that there is absolutely no evidence against them except the statement of co-accused which is pressed into service on behalf of the prosecution. Even the learned A.P.P. fairly accepts this position; He was unable to point out any other material on record to implicate the Applicant(s) in the charge of conspiracy or otherwise. The Counsel for the applicant(s) has rightly placed reliance on the exposition of the Apex Court in Suresh Budharmal Kalani Alias Pappu Kalani Vs. State of Maharashtra, reported in 1998 S.C.C. (Cri) 1625, in particular paragraphs 6 and 7 of the said decision. The Apex Court has observed that at the

stage of framing of the charge the Court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence that the prosecution may adduce in the trial which would commence only after the charges are framed and the accused denies the charges. The Apex Court then relying on the exposition in the case of Kashimira Singh V. State of M.P., reported in A.I.R. 1952 S.C. 159 has observed that, confession of co-accused cannot be called in aid to frame charges against accused in the absence of any other evidence to do so. In the present case except the statement of co-accused, there is no other independent evidence. A priori, it will not be open to

frame any charge against the applicant(s) herein. In view of this settled legal position, the applications as filed by the applicant(s) before the trial Court for discharge ought to have been allowed. Accordingly, the applicant(s) succeed. Impugned orders are set aside and Misc. applications preferred by the revision applicants before the trial Court are allowed. Ordered accordingly.